

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

I N D E X

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*****Transcriber's Note: Defendant's microphone was not on. It was very difficult at times to hear defendant and defense counsel.**

Colloquy

3

1 THE COURT: Okay. We have the case of United States
2 versus James Morris. It's number 5-440-13. Counsel, please
3 identify yourselves.

4 MR. BRESNICK: Good morning, Your Honor. Michael
5 Bresnick for the Government. With me is Ray Armstrong from
6 IRS.

7 MR. POWELL: Good morning, Judge. Wayne Powell
8 appearing on behalf of the defendant James Morris.

9 MR. THOMPSON: Good morning, Your Honor. Ron
10 Thompson also appearing on behalf of James Morris.

11 THE COURT: All right. Counsel, we were here on -- I
12 think it was November 2nd for sentencing. An issue arose at
13 that time with regard to the 851 notice that the Government had
14 filed. And we recessed to give counsel an opportunity to take
15 a look at it and to determine exactly where you -- your
16 respective positions were.

17 Now, the record reflects that the Government, in
18 fact, filed the 851 notice on December 18, 2007 at 9:08 a.m.
19 The record also reflects that the Court met with counsel in
20 this courtroom at 10:11 a.m. to discuss the jury selection
21 process. We talked with counsel and then went down to the
22 central jury room to hand out a questionnaire to the jurors.
23 We went down to hand out that questionnaire, I believe, at
24 about 11:48. The jury selection continued thereafter until

Powell - Argument

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1 December 20th, 12:18:07 to 12:20:07. And then we recessed and
2 brought the jury back in January -- on the 16th of January.
3 And at that time, we swore the panel and we began the trial.

4 Counsel, do you take issue with that recitation of
5 the time frames involved here?

6 MR. POWELL: No, Judge.

7 MR. BRESNICK: No, Your Honor.

8 THE COURT: All right. Counsel, I will hear your
9 respective positions at this point. You've had a chance to
10 take a look at the situation, and I'll hear what you have to
11 say.

12 MR. POWELL: Thank you, Judge. Judge, Your Honor's
13 recitation of the -- of the procedural record is accurate and
14 is undisputed. We don't dispute it in our papers as well. Our
15 position, Judge, is relatively straightforward. We concede,
16 Judge, that the docket sheet seems to suggest that the process
17 of jury selection actually began at about 10:08 on the morning
18 of December 18th. And that the Government, about an hour prior
19 to the time that the parties appeared before Your Honor, had
20 electronically filed his Section 851 notification.

21 Our position, Judge, despite the fact that there
22 seems to be a suggestion in US versus Reeves (phonetic), is
23 that electronic filing is sufficient to meet the filing
24 requirements for Section 851, is that to interpret Reeves
25 (phonetic) in that fashion actually deprives the defendant of

1 the legislative intent, the benefit that -- that Congress
2 intended to confer upon defendants in Section 851.

3 Essentially, Judge, what the Government is permitted
4 to do, if electronic filing is accepted, is to fail to timely
5 notice a defendant in any meaningful fashion of the fact that
6 the Government intends to rely on some predicate convictions.
7 Mr. Morris's circumstances back on December 18th were that he
8 was physically here in the courtroom. There doesn't appear to
9 be any record, and I don't find anything in the Government's
10 papers, to suggest that the Government disputes that he was not
11 physically served with the Section 851 notice, nor was counsel
12 served with an 851 notice.

13 We concede, Judge, that there is a standing order in
14 the Eastern District which suggests that filing by electronic
15 filing pursuant to the -- to the local rule is sufficient for
16 filing purposes. But I -- I take issue, Judge, with whether or
17 not, when the standing order was prepared, it contemplated
18 Section 851 consequences. And the consequences are
19 significant. It's the last opportunity for the defendant to
20 make a determination as to whether or not he should be put to
21 his proofs, or whether or not the defendant should avail
22 himself of an opportunity to enter into a guilty plea. A
23 defendant who is not properly noticed, of course, cannot make
24 that determination.

25 Our position is that electronic filing, despite the

1 standing order in the Eastern District, is insufficient to
2 vindicate that prerogative that the defendant, in effect, has
3 no notice, that the Government tends to rely on predicate
4 offenses for purposes of handing his sentence if he's convicted
5 at trial. The Government then has the ability to go forward
6 with the trial. And if the Government is successful, as it has
7 been in this case, defendant has to be in court to impose an
8 enhanced sentence.

9 The sole purpose, it seems to me, of Section 851,
10 Judge, is to afford defendants a last opportunity, prior to the
11 time that the jury is impaneled, to make a decision as to
12 whether or not proceeding to trial is a prudent decision to
13 make. This defendant, because of the manner in which the
14 Section 851 motion was filed, was denied the opportunity to do
15 that.

16 There can't be any question, it seems to me, Judge,
17 that there could not have been any discussion between Mr.
18 Morris and his counsel back on December 18, 2007, as to whether
19 or not on that date he should proceed to trial. Or whether he
20 should then make an effort to avail himself of a plea in the
21 case short of trial, because he now has notice that the
22 Government intends to rely on these predicate convictions in an
23 effort to enhance his sentence. And in Mr. Morris's case in
24 particular, Judge, because of the mandatory minimum in this
25 case, which is a life sentence, certainly, that issue is an

Bresnick - Argument

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1 issue of substantial magnitude.

2 Perhaps the most important decision that Mr. Morris
3 had to make before going forward in this case was whether or
4 not to place himself in jeopardy of an enhanced sentence, which
5 would result in a life sentence, or availing himself of a plea
6 and seeking to avoid the imposition of a life sentence by
7 pleading guilty prior to the time of trial.

8 So despite the fact that US versus Reeves, which is
9 the only Third Circuit case, Judge, that I find, seems to
10 suggest that the -- the -- the standing order and the court
11 rules are incorporated by reference into the 851 notice
12 requirements. I would suggest to the Court that that's
13 insufficient. That on its face, Mr. Morris is deprived of an
14 opportunity to make perhaps the most important decision that he
15 needs to make in terms of deciding whether or not to proceed to
16 trial or to plead guilty.

17 For that reason, Judge, despite the fact that the
18 Government -- and we concede that the Government electronically
19 filed his 851 notice perhaps an hour or so before the
20 commencement of jury selection -- that this Court should not
21 deem as sufficient service under the circumstances, and that
22 the Government should not be entitled to seek and/or obtain an
23 enhanced sentence.

24 THE COURT: All right. Mr. Bresnick.

25 MR. BRESNICK: Yes, Your Honor. Good morning, Your

Bresnick - Argument

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1 Honor. Your Honor, as an initial matter, I just think it
2 should be noted for the record that the defendant does not
3 appear to be challenging the substance of the 851 information
4 itself, but it's that he was, in fact, convicted of the
5 convictions that are detailed in that 851 information, but is
6 merely challenging the -- the service. Your Honor, the
7 Government in this instance complied with all rules and
8 regulations regarding service in this district. It
9 electronically filed the document as it is permitted to do so,
10 in fact, required to do so. And as the Government pointed out,
11 local rule 5.1.2 indicates that electronic service in this
12 instance constitutes service of the filed documents of all
13 parties and shall be deemed as satisfying the requirements of
14 the relevant Federal Rules of Criminal Procedure.

15 Moreover, the local rule state that registration as
16 an ECF file user constitutes agreement to receive and consent
17 to make electronic service of all documents. The Government
18 did precisely what it was required to do in this case. I
19 understand the defendant's argument here that perhaps he was in
20 court already at the time that -- of the -- of the day the jury
21 selection was scheduled to begin. And he claimed that he was
22 deprived of -- perhaps to make an informed decision in this
23 last night.

24 Your Honor, this is -- not that we need to get into
25 this ultimate issue, but this is precisely why the Government

Bresnick - Argument

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1 believed that it's not until the jury is sworn, as opposed to
2 -- to when jury selection begins that the Government needs to
3 file the 851 notice. The defendant still had plenty of
4 opportunity to plead guilty the next day or the following day
5 or -- or many days after that, and he -- the jury wasn't sworn
6 until January 16, 2008. The trial didn't begin until that day.
7 The jury wasn't, in fact, selected until December 20, 2007. So
8 defendant had plenty of opportunity to decide to enter a guilty
9 plea.

10 So given that, Your Honor, and given the Government
11 did precisely what it was supposed to do in terms of filing
12 requirements, I believe that the 851 information is, in fact,
13 sufficient and the enhanced sentence should apply.

14 THE COURT: All right.

15 MR. BRESNICK: Thank you, Your Honor.

16 THE COURT: Counsel, I have reviewed the matter.
17 I've looked at the authorities that you've given to me, and I
18 believe that the Government did do everything that it was
19 supposed to do in this situation. The Government did give
20 notice before jury selection began. And if that is the
21 requirement, the Government satisfied it. If the requirement
22 is that it's before the jury is sworn, they certainly satisfied
23 it, because the jury was not sworn until a month later. I'm
24 compelled to conclude that the 851 notice was proper under all
25 the circumstances.

Morris - Statement

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1 Certainly, the Third Circuit can take a look at this
2 and determine whether or not I'm correct, but the use of filing
3 by ECF, the rules, the standing orders, all indicate to me that
4 service was proper. So under the circumstances, I'm going to
5 conclude that the defendant is, in fact, subject to the
6 mandatory sentence that is required pursuant to that 851
7 notice.

8 All right. Counsel, anything -- yes, sir?

9 THE DEFENDANT: May I speak, Your Honor?

10 THE COURT: Certainly.

11 THE DEFENDANT: May I approach -- may I approach the
12 podium?

13 THE COURT: You certainly may. (pause) Mr. Morris.

14 THE DEFENDANT: Yes. Within the 851 statute, it says
15 that they did comply. They did comply as far as making the
16 electric filing. I'm not disputing that. But I never had an
17 opportunity -- you understand what I'm saying -- to more or
18 less address the Courts on the matter. I never had an
19 opportunity. And I wrote Mr. Finney in reference to that,
20 saying that I never seen this motion. And -- and you know --
21 and I never had an opportunity to -- to even dispute the motion
22 that the Government put in.

23 If we're here, and it's electrically filed, I'm not
24 notified. And if -- and if counsel went back to his office and
25 got this motion, that ain't effective, because they didn't --

Morris - Statement

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1 they didn't -- they didn't apprise -- they didn't make me aware
2 as to what -- what they -- they received. And I -- and I -- I
3 wrote -- I wrote Mr. Finney in reference to this.

4 And Your Honor, another thing, I never would have
5 knew if I had tried to retain Ms. Hope Lefebber for appeal. And
6 she made me cognizant as what's going on as -- as to reference
7 to the motion. She said, "Mr. Morris, are you aware that you
8 got an 851?" I said, "No, I had no idea." So if counsel did
9 get this motion, they're ineffective, and I let Mr. Finney
10 know.

11 THE COURT: All right. Counsel, anything further?

12 MR. POWELL: I have nothing further, Judge.

13 MR. BRESNICK: No, Your Honor.

14 THE COURT: The -- the sentencing Guidelines in this
15 matter -- notwithstanding the ruling that I just made, the
16 sentencing Guidelines, based upon the defendant's position and
17 the Government's position, are 262 to 327 months, based upon an
18 offense level of 36 and a criminal history category of four.

19 Counsel, I will hear anything more you want to say or
20 your client wants to say before I formally impose sentence.

21 MR. POWELL: Judge, we'll submit on the arguments
22 from November 2nd.

23 THE COURT: All right. Mr. Morris, do you have
24 anything more you want to say with regard to this matter?

25 THE DEFENDANT: Yes, Your Honor.

Powell - Argument

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1 THE COURT: Well, why don't you come forward and I'll
2 hear anything you have to say.

3 THE DEFENDANT: This -- it was one of those -- in
4 reference to the probation, I was enhanced twice. I can see
5 one year probation. And it's not on the record, but I received
6 one year probation. I violated the probation. It wasn't over
7 a year and a day, so it didn't violate 4A1.2. And I received
8 three years, and I have a -- a simple assault. So what I'm
9 saying is, I should be in category three and, hopefully, a
10 level 36, because it should be four points instead of the
11 seven.

12 THE COURT: Mr. Powell or Mr. Thompson, do you have
13 anything you want to say to supplement that?

14 MR. POWELL: I'm sorry, Judge, can I have a moment
15 with Mr. Morris?

16 THE COURT: You certainly may. (pause)

17 MR. POWELL: Judge, I'm looking at the pre-sentence
18 report which was prepared by Probation, which indicates that
19 there was a violation of probation after the 1994 offense, of
20 which Mr. Morris was sentenced to three years incarceration
21 concurrent to another indictment. Mr. Morris disputes that, if
22 that's the case. I presume that the Probation Department
23 reviewed the appropriate State Court directly. There will be
24 no way for us, Judge, to determine whether or not this is an
25 accurate representation of whether or not Mr. Morris's

Powell - Argument

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1 recollection is accurate.

2 Obviously, Mr. Morris is the defendant, Judge. And
3 presuming that his recollection of what his sentence -- his
4 recollection is accurate, then he's correct, that would change
5 the -- the Guideline range in this matter because it would
6 change his criminal history category.

7 MR. BRESNICK: Your Honor, for the record, could I be
8 certain what paragraph of the PSR we're referring to?

9 THE COURT: Are you talking about paragraph 112,
10 Mr. --

11 MR. POWELL: Page 20, Judge.

12 THE COURT: Page 21?

13 MR. POWELL: Page 20, Judge.

14 THE COURT: And it's paragraph 112?

15 MR. POWELL: Yes.

16 THE COURT: You're suggesting -- Mr. Morris is
17 suggesting that that conviction is not a conviction that should
18 be counted in this?

19 MR. POWELL: Well, Judge, the -- the record actually
20 indicates disorderly persons. Disorderly persons offenses in
21 New Jersey are not crimes. Crimes are --

22 THE COURT: Well, it -- well, it also indicates
23 possession of cocaine, and the recitation of the facts outlines
24 that.

25 MR. POWELL: Well, that -- that's correct, Judge, if

Powell - Argument

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1 the original charge was possession of cocaine. But even
2 possession of cocaine cases, Judge, can be remanded to the
3 Municipal Court in New Jersey and handled under 2C:35 -- under
4 2C:35-10a, under 2C:35-10c, which is failure to turn over, even
5 though it's an otherwise indictable offense (inaudible)
6 disorderly persons offense that the quantity is a non-
7 requirement. And since the record itself indicates disorderly
8 persons, Judge, and a fine and no other penalty other than
9 probation, the maximum probation that one could receive for a
10 disorderly person in New Jersey is one year.

11 THE COURT: Well, how -- how then, could he be
12 sentenced upon violation of the probation to three years?

13 MR. POWELL: It seems to me, Judge, that he couldn't.
14 Either the record is inaccurate as to the sentence that was
15 imposed, or the record is inaccurate as to the nature of the
16 conviction. But the two can't be accommodated, Judge. It's
17 one or the other.

18 THE COURT: Well, let's hear from the Probation
19 Office.

20 UNIDENTIFIED SPEAKER: I do have the documents, Your
21 Honor. I have the order dated January 22, 1999. It's a
22 Superior Court of New Jersey discharging the defendant's
23 probation and sentencing him to a term of incarceration in a
24 State prison. I also have a pre-sentence report. All of the
25 documents were sent from the District of New Jersey. I have

Powell - Argument

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1 the indictment, the pre-sentence report, the judgment, the
2 parole, which Your Honor is welcome to look at or --

3 THE COURT: Well, before --

4 UNIDENTIFIED SPEAKER: -- the -- whoever wants to
5 look at it.

6 THE COURT: -- before we go any further, counsel,
7 will you take a look at the documentation that the Probation
8 has and see whether we really have --

9 MR. POWELL: That representation, however, Judge --

10 THE COURT: -- an issue here?

11 MR. POWELL: That representation makes sense. The
12 -- the Probation officer indicated that probation was
13 terminated and the defendant was then sentenced to three years
14 incarceration. He was sentenced to three years incarceration
15 on a separate indictment from 1999. And it would make sense
16 that the underlying disorderly persons probation would have
17 been dismissed because he would not be subject to the State
18 prison sentence for a violation of probation.

19 UNIDENTIFIED SPEAKER: It said that probation was
20 revoked and then a term of incarceration was then imposed.
21 That's what it was. (pause)

22 MR. POWELL: Judge, I just had a chance to speak with
23 Mr. Morris, and Mr. Morris disputes the accuracy of the record.
24 Even though the record indicates that the probation was
25 revoked, Mr. Morris indicates, Judge, that probation was

Powell - Argument

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1 terminated. That is that he paid the mandatory fines and that
2 his otherwise one-year period of probation, which would have
3 been the maximum that could be imposed for disorderly persons
4 offense, was -- was discharged as opposed to being revoked and
5 acquiring another sentence. I don't know how that can be
6 resolved. The document that Probation has supplied to me
7 indicates a conviction for a third-degree possession of
8 cocaine. And it's not comporting with Mr. Morris's
9 recollection to what the disposition is.

10 THE COURT: A third-degree possession of cocaine is
11 punishable by what?

12 MR. POWELL: A maximum of five years in prison.

13 THE COURT: All right. All right. We're going to
14 have the Probation Office make the records that we've been
15 discussing here a part of the record of these proceedings. All
16 right. Based upon the record as it presently stands, I am
17 compelled to conclude that the Guideline range that I mentioned
18 earlier is an accurate Guideline range, offense level 36,
19 criminal history category four, Guideline range of 262 to 327
20 months. All right. Counsel, was there anything more before I
21 formally impose sentence?

22 MR. POWELL: I have nothing, Judge.

23 MR. BRESNICK: No, Your Honor.

24 THE COURT: You want to bring your client forward,
25 Mr. Powell and Mr. Thompson. (pause) Mr. Morris, I am going

Morris - Statement/The Court - Sentencing

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1 to impose sentence on you in a few minutes. Before I do that,
2 I will hear anything more you have to say. I will indicate to
3 you that you have made several objections here at these
4 proceedings, as objections are part of the record, and you will
5 have the opportunity to convince the Third Circuit Court of
6 Appeals that your position is the proper position. Other than
7 that, I will hear whatever more you want to say.

8 THE DEFENDANT: I don't know what more I can say. I
9 believe Mr. Baukman spoke in volumes for me, you know what I'm
10 saying, for me, as well as the other defendants who fought this
11 trial earnestly. There's nothing more for me to say, you know
12 what I'm saying? I look at the trial that -- you know what I'm
13 saying, it was a trial that wasn't perfect. And -- and the
14 constitution doesn't afford me a perfect trial, but it was
15 fair, Your Honor. And I thank you for that opportunity.
16 That's it.

17 Oh, one more. I'd just like to -- before I go out, I
18 had a -- while I was incarcerated, I had a granddaughter.
19 She's 13 months now. I just would like to -- I never -- I
20 never touched her. I like the smell of babies. I just want to
21 touch my baby.

22 THE COURT: All right. All right. I've indicated
23 what the Guidelines are. I've indicated what the mandatory
24 sentence is here. The crimes that were committed here and for
25 which you are found guilty, Mr. Morris, are most serious

The Court - Sentencing

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1 crimes. The drug conspiracy that the jury found you to be a
2 part of was a multi-state operation. Huge volumes of drugs
3 were being distributed. Huge amounts of money were involved.
4 In fact, in -- in the search that was conducted at the Burden
5 Hill property, they found more than a half a million dollars in
6 cash packaged up, along with other indications of drug
7 distribution. So the crimes that were involved here are of the
8 most serious nature.

9 The -- looking at your background, Mr. Morris, you
10 have seven prior convictions, eight arrests -- or five arrests
11 for which you were not convicted. They were either dismissed
12 or evidence was suppressed. So you have been involved in the
13 criminal justice system over an extended period of time. It is
14 unfortunate that you find yourself here, really.

15 The indications are that you came from a pretty good
16 upbringing, and it would appear that you could have
17 accomplished a great deal in your life without getting involved
18 in the drug scene. The indications are that you finished high
19 school. You were going to go on to college. You were going to
20 play football, I believe, in college. Evidently an injury
21 curtailed that. But it evidently also sent you down the course
22 and brought you into this courtroom ultimately, which is very
23 unfortunate because you didn't have to be here, Mr. Morris.
24 You were fully capable of being a productive citizen. So it's
25 a tragedy in that regard.

The Court - Sentencing

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1 The sentence that I have to impose here is obviously
2 a sentence that's going to punish you. It's going to protect
3 the public. It's going to deter others from engaging in this
4 kind of conduct. And I really don't have any options at this
5 juncture. Go ahead.

6 THE DEFENDANT: I'm going to respectfully ask that
7 you give me the 262 in case the light comes on. I feel as
8 though that would protect the public. And also, I look at that
9 as enough time to be rehabilitated, Your Honor.

10 THE COURT: Well, Mr. -- Mr. Morris, I don't have any
11 options. If the -- if this matter goes up to the Third Circuit
12 and if they decide that the life -- mandatory life sentence is
13 inappropriate, it will come back here to me for sentencing, and
14 I will hear -- hear what you have to say at that time. But at
15 this juncture, I have no alternative. All right? (No audible
16 response)

17 Pursuant to the Sentencing Reform Act of 1984, it's
18 the judgment of this Court that you, James Morris, be committed
19 to the custody of the Bureau of Prisons to be incarcerated for
20 a term of life imprisonment on Count 1. On Counts 52, 53, 54
21 and 55, the sentence is that you be incarcerated for a period
22 of 48 months on each count to run concurrently with each other
23 and concurrently with the sentence on Count 1.

24 Upon release from imprisonment, you're placed on
25 supervised release for a period of ten years. The specific

The Court - Sentencing

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1 conditions of supervised release are that you not possess
2 controlled substances, you not possess firearms, you not
3 violate any State, Federal or local laws. I'm not going to
4 impose a fine. No useful purpose would be served by that. And
5 you are to pay the special assessments of \$500.

6 Do you understand the sentence, Mr. Morris?

7 THE DEFENDANT: Yes, I do, Your Honor.

8 MR. BRESNICK: Pardon me, Your Honor. I believe Your
9 Honor has to pronounce the forfeiture as part of the sentence
10 as well.

11 THE COURT: The forfeiture will -- order will be
12 signed.

13 THE DEFENDANT: I wrote a letter in reference to
14 that. This alleviates from a forfeiture hearing? It precludes
15 me from that, rather? I'm -- I'm not entitled to a forfeiture
16 hearing?

17 THE COURT: Do you have anything, Mr. Bresnick?

18 MR. BRESNICK: Your Honor, the defendant would be
19 permitted to pursue whatever options are available to anyone
20 against forfeiture as --

21 THE COURT: Well, there's no question about that --

22 MR. BRESNICK: Right.

23 THE COURT: -- but --

24 THE DEFENDANT: The question is, am I precluded from
25 a forfeiture hearing? That's --

The Court - Sentencing

21

1 THE COURT: No, you're not.

2 THE DEFENDANT: Well, I -- I would like to have one.

3 THE COURT: All right. All right. We will schedule
4 a forfeiture hearing.

5 MR. BRESNICK: Well, I -- I'm not sure what the
6 proper process is, Your Honor, but whatever the process is, the
7 defendant would be entitled to it.

8 THE COURT: Yes, indeed. All right. Mr. Morris, you
9 do have a right to appeal. If you want to file an appeal, it
10 has to be filed within 14 days. We'll give you an attorney
11 free of charge to file it. You have indicated a desire to
12 appeal. And you, just a few minutes ago, indicated that you
13 had actually talked to an attorney with regard to an appeal?

14 THE DEFENDANT: Well, yeah, what I said is that I
15 wasn't aware of the 851 motion. I tried to retain -- retain
16 Ms. Hope Lefebber for appeal, and she apprised me to this 851
17 motion.

18 THE COURT: Well, is she representing your interest
19 on appeal or --

20 THE DEFENDANT: No, no. I believe Mr. Powell and Mr.
21 Thompson would.

22 THE COURT: All right. Mr. Powell --

23 MR. BRESNICK: Well, Your --

24 THE COURT: Go ahead.

25 MR. BRESNICK: Your Honor, I'm only concerned because

The Court - Sentencing

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1 the defendant just got up before the Court and alleged that
2 they were ineffective. I'm not sure.

3 THE COURT: There is certainly that -- that problem,
4 Mr. Morris. You indicated a few minutes ago with regard to
5 that 851 motion that the -- your counsel were ineffective.

6 THE DEFENDANT: Well, Your Honor, what I said -- what
7 I said is that if they were -- if they were apprised of it and
8 didn't make me aware of this, yeah, they were. I'm not
9 recanting that, they were. If they got this motion, they were.

10 THE COURT: Well, what I'm going to do is this. Mr.
11 Powell and Mr. Thompson, you file whatever appeal is necessary
12 in accordance with your client's request, and then we will deal
13 with counsel.

14 THE DEFENDANT: Right. You will have to deem if
15 they're ineffective or not, correct?

16 THE COURT: Excuse me?

17 THE DEFENDANT: You would have to deem that they're
18 ineffective or not, correct?

19 THE COURT: Well, ultimately that may come before me,
20 yes.

21 THE DEFENDANT: Yeah, yeah.

22 THE COURT: All right. Anything further?

23 MR. POWELL: I don't have anything, Judge.

24 MR. BRESNICK: No, Your Honor.

25 THE COURT: Recess.

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(Proceedings concluded at 10:13 a.m.)

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C E R T I F I C A T I O N

I, Brenda Boulden, court approved transcriber, certify
that the foregoing is a correct transcript from the official
electronic sound recording of the proceedings in the above-
entitled matter.

_____	_____
DATE	BRENDA BOULDEN